

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-7837

CARSON W. MUNGO,

Plaintiff - Appellant,

versus

GEORGE JOHNSON; LISA PALOMBO; BRENDA CONRAD;
JOHN SIMPSON; TOM KOWAISKI; PAMELA RICE;
STEPHEN J. HUSK,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. W. Earl Britt, District Judge. (CA-96-767)

Submitted: April 17, 1997

Decided: April 29, 1997

Before NIEMEYER and WILLIAMS, Circuit Judges, and BUTZNER, Senior Circuit Judges.

Affirmed by unpublished per curiam opinion.

Carson W. Mungo, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order denying relief on his Fed. R. Civ. P. 60(b) motion, in which he challenges the district court's construction of his civil complaint pursuant to 28 U.S.C. § 2241 (1994), and subsequent dismissal for failure to exhaust administrative remedies. We have reviewed the record and the district court's order and find no reversible error.

Appellant's underlying complaint challenges the validity of an allegedly unconstitutional conviction and/or sentence, despite the fact that he does not seek release from incarceration. Because Appellant did not make any showing that his conviction has been successfully challenged or overturned, his complaint was subject to dismissal pursuant to Heck v. Humphrey, ___ U.S. ___, 62 U.S.L.W. 4594, 4597 (U.S. June 24, 1994) (No. 93-6188). Accordingly, we find that the district court's denial of Appellant's Rule 60(b) motion was not an abuse of discretion. See United States v. Williams, 674 F.2d 310, 312 (4th Cir. 1982). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED